

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

SYSTEM OPTICS, INC. dba NOVUS
CLINICS
518 West Ave.
Tallmadge, Ohio 44278

Plaintiff,

v.

TWIN CITY FIRE INSURANCE
COMPANY
501 Pennsylvania Parkway, Suite 400
Indianapolis, Indiana 46280

And

HARTFORD FINANCIAL SERVICES
GROUP, INC.
One Hartford Plaza
Hartford, Connecticut 06155

Defendants.

CASE NO.

JUDGE

COMPLAINT

(JURY DEMAND ENDORSED HEREIN)

Plaintiff System Optics, Inc. dba Novus Clinics, for its Complaint against Defendants Twin
City Fire Insurance Company and Hartford Financial Services Group, Inc. states and alleges as
follows:

1. Plaintiff is the owner and operator of several clinics which operate to provide
optometry services, ophthalmologic services, and ophthalmologic surgery services in the State of
Ohio, including in Summit County, Ohio, which has been forced, by recent orders by the State of
Ohio, to cease its operations – through no fault of its own – as part of the State’s efforts to slow
the spread of the COVID-19 global pandemic. The closures mandated by these orders present an
existential threat to Plaintiff, and other small, local businesses that employ hundreds of Ohio
residents. To protect its businesses from situations like these, which threaten the livelihoods of its

employees and owners, based on factors wholly outside of its control, Plaintiff obtained business interruption insurance from Defendant Twin City Fire Insurance Company (“Twin City”), a subsidiary of Defendant Hartford Financial Services Group, Inc. (“Hartford”). In blatant breach of Defendants’ insurance obligations that it voluntarily undertook in exchange for Plaintiff’s premium payments, Defendants have denied Plaintiff’s claim arising from the State-ordered interruption of its business and the global pandemic.

2. As a result, Plaintiff now brings this action against Defendants for their failure to honor their obligations under a commercial business owners insurance policy sold and issued to Plaintiff, which provides coverage for losses incurred due to a “necessary suspension” of its operations, including when its business is forced to close due to a government order.

3. On March 9, 2020, Governor Mike DeWine issued Executive Order 2020-01D, Declaring a State of Emergency in Ohio, and explaining: “COVID-19 is a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person. The virus is spread between individuals who are in close contact with each other (within about six feet) through respiratory droplets produced when an infected person coughs or sneezes. It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes.”

4. On March 11, 2020, the head of the World Health Organization declared COVID-19 a pandemic.

5. On March 15, 2020, Ohio Governor Mike DeWine and Amy Acton, M.D., M.P.H., Director of the Ohio Department of Health, issued a Public Health Order, closing all bars and

restaurants except sales for carry-out beverage and food, in an effort to address the ongoing COVID-19 pandemic.

6. On March 17, 2020, Governor DeWine and Dr. Acton issued orders closing all polling locations.

7. On March 17, 2020, Governor DeWine and Dr. Acton issued orders regarding the Management of Non-essential Surgeries and Procedures throughout Ohio, and ordering that as of Wednesday, March 18, 2020, all non-essential or elective surgeries and procedures that utilize PPE should not be conducted; further, The American Optometric Association, Ohio Optometric and American Academy of Ophthalmology deemed Eye Wellness exams as non-essential and recommended the cessation of services until further notification.

8. On March 20, 2020, Governor DeWine and Dr. Acton issued orders to cease business operations at all hair salons, day spas, nail salons, barber shops, tattoo parlors, body piercing locations, tanning facilities and massage therapy locations.

9. On March 22, 2020, Governor DeWine and Dr. Acton issued an order that all persons stay at home unless engaged in essential work or activity.

10. As a result of the Orders identified in Paragraphs 3 and 5-9 ("Closure Orders"), Plaintiff has been forced to halt ordinary operations, resulting in substantial lost revenues and forcing the Plaintiff to shut down operations and permanently lay off employees.

11. But despite Defendants' express promise in its Policy to cover the Plaintiff's business interruption losses when the government forces them to close, Defendants have issued a denial for any losses related to the Closure Orders without first conducting any meaningful coverage investigation, let alone an investigation that would result in any reasonable justification for denial of the claim as is required under Ohio law.

12. Defendants' denial of coverage is without justification and is contrary to the terms, obligations, and provisions of the Policy because as explained by Governor DeWine in his Order declaring a State of Emergency, and every other Order issued by Governor DeWine and Dr. Acton, the substance of COVID-19 results in property damage and "direct physical loss of or physical damage" to Plaintiff's premises in that it can exist, contaminate, spread, and be contracted from surfaces and objects in and on premises.

13. Defendants' cursory coverage denial is arbitrary and unreasonable, and inconsistent with the facts and plain language of the Policy at issue. This denial appears to be driven by the insurance industry's and Defendants' desire to preempt its own financial exposure to the economic fallout resulting from the COVID-19 crisis, rather than to initiate, as Defendants are obligated to do, a thorough and fair investigation of the claims and a careful review of the Policy sold to Plaintiff in exchange for valuable premiums.

14. As a result of Defendants' wrongful denial of coverage, Plaintiff files this action for a declaratory judgment establishing that it is entitled to receive the benefit of the insurance coverage purchased, for indemnification of the business losses it has sustained, for breach of contract, and for bad faith claims handling.

PARTIES

15. Plaintiff is an Ohio corporation, with its principal place of business in Tallmadge, Ohio. Plaintiff operates four (7) centers for the provision of non-essential eye care services, including optometry, ophthalmologic, and ophthalmologic surgery. This includes centers at 1650 South Union Ave., Alliance, Ohio 44601; 1790 Town Park Blvd., Suite D, Uniontown, Ohio 44685; 3510 Manchester Rd., Akron, Ohio 44319; and 518 West Ave., Tallmadge, Ohio 44278.

16. Defendant Twin City is an insurance company engaged in the business of selling insurance contracts to commercial entities such as the Plaintiff in Ohio and elsewhere. Twin City is incorporated in the State of Indiana with its principal place of business in Hartford, Connecticut. It is licensed to draft policy forms, underwrite insurance policies, and sell insurance in the State of Ohio. It is registered to do business in the State of Ohio with the Ohio Department of Insurance.

17. Defendant Hartford is incorporated under the laws of the State of Connecticut, with its principal place of business in Hartford, Connecticut. Twin City is a wholly owned subsidiary of Hartford. Hartford is engaged in the business of investment and insurance operations, the latter of which is performed through subsidiaries such as Twin City. All claims submitted under policies of insurance issued by Twin City are serviced, evaluated, adjusted, approved and/or denied, through employees, agents, and/or representatives of Hartford and/or one of its subsidiaries.

JURISDICTION AND VENUE

18. This Court has subject matter jurisdiction because the Policy at issue herein was issued to Plaintiff in this County, Defendants delivered a letter to Plaintiff in Summit County, Ohio, evidencing Defendants' breach, and in accordance with R.C. 2721.01, et seq., in regard to determining the rights and obligations of the parties through a declaratory judgment.

19. This Court has personal jurisdiction of Defendants because they entered into a contract of insurance with Plaintiff in Summit County, Ohio, and because Defendants conduct business throughout the State of Ohio and County of Summit, marketing, selling, underwriting, and issuing insurance policies.

20. Venue is proper because some or all of the facts giving rise to the claim for relief occurred in Summit County, Ohio.

FACTUAL ALLEGATIONS

21. Plaintiff incorporates by reference, as if fully set forth herein, the allegations set forth in paragraphs 1-20 above.

A. Twin City's Spectrum Business Owner's Policy

22. In exchange for substantial premiums, Twin City sold Plaintiff its Spectrum Business Owner's Policy promising to indemnify the Plaintiff for losses resulting from occurrences, including the "necessary suspension" of business operations at any insured location caused by a government order, during the relevant time period.

23. Twin City issued Spectrum Business Owner's Policy, No. 45 SBA AI6052 SA, effective 07/01/19 to 07/01/20, to Plaintiff ("Policy"). The Policy was renewal of a previous policy, bearing No. 45 SBA AI6052. An authentic duplicate of the Policy is attached hereto as Exhibit 1.

24. The Policy is an "all risk" or "special perils" policy that provides broad coverage for losses caused by any causes unless expressly excluded.

25. The Policy does not exclude for losses of business income as a result of the property damage occasioned in Plaintiff's premises caused by the novel COVID-19 Coronavirus.

26. The Policy does not exclude for losses of business income as a result of compliance with government orders as a result of the community spread of the novel COVID-19 Coronavirus.

27. The Policy does not exclude for losses of business income as a result of pandemics.

28. Thus, the Policy, an all-risk policy purchased by Plaintiff covers losses caused by the novel COVID-19 Coronavirus.

29. In addition to property damage losses, Twin City agreed to "pay for the actual loss of Business Income" sustained by Plaintiff "due to the necessary suspension" of Plaintiff's

operations during the period of business interruption caused “by direct physical loss of or physical damage to property” at the Plaintiff’s premises.

30. With respect to business interruption losses, “suspension” means: (1) “the partial shutdown or complete cessation of your business activities”; or (2) “that part or all of the ‘scheduled premises’ is rendered untenable as a result of Covered Cause of Loss if coverage for Business Income applies to the policy.”

31. “Business Income” is defined in relevant part under the Policy as “Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no direct physical loss or physical damage had occurred” plus “continuing normal operating expenses incurred, including payroll.”

32. Twin City also expressly promised to pay “reasonably and necessary Extra Expense” incurred during the interruption period that Plaintiff “would not have incurred if there had been no direct physical loss or physical damage to property at the ‘scheduled premises’.”

33. “Extra Expense” is defined in relevant part under the Policy as any expense incurred (1) “to avoid or minimize the suspension of business and to continue ‘operations’”; (2) to “minimize the suspension of business if you cannot continue ‘operations’”; or (3) “to repair or replace any property[.]”

34. The Policy also includes coverage for “Civil Authority”, under which Twin City expressly promised to pay for the loss of Business Income and necessary Extra Expense sustained by Plaintiff “when access to [Plaintiff’s] ‘scheduled premises’ is specifically prohibited by order of a civil authority as a direct result of a Covered Cause of Loss to property in the immediate area of [Plaintiff’s] ‘scheduled premises’.”

B. Plaintiff's Losses Due to the Coronavirus Pandemic and Closure Orders

35. On March 11, 2020, the World Health Organization declared that the emerging threat from the novel coronavirus – otherwise known as COVID-19 – constituted a global pandemic.

36. Research on COVID-19 and recent reports from the CDC indicate that the COVID-19 strains physically infect and can remain viable on surfaces for at least 17 days, a characteristic that renders property exposed to the contagion potentially unsafe and dangerous. Other research indicates that COVID-19 can linger on surfaces for up to four weeks in low temperatures.

37. In response to the pandemic, and the community spread of COVID-19 in Ohio, Governor DeWine and Dr. Acton issued the Closure Orders.

38. The Closure Orders specifically apply to all of the Plaintiff's scheduled premises under the Policy.

39. The continuous presence of COVID-19 on or around Plaintiff's premises has rendered the premises unsafe and unfit for their intended use and therefore caused direct physical property damage or physical loss under the Policy.

40. The Closure Orders issued by Governor DeWine and Dr. Acton issued in response to these dangerous physical conditions, prohibit non-essential services, including those of Plaintiff, thereby causing the necessary suspension of Plaintiff's business operations and triggering the Civil Authority coverage under the Policy. In this regard, Dr. Acton's "Stay at Home Order" prohibits continuing business operations which are "non-essential", but also requiring that "Essential Business Operations shall comply with Social Distancing Requirements" which is not practical for

Plaintiff's business. The Closure Orders also mandated "all non-essential or elective surgeries and procedures that utilized PPE should not be conducted", so as to ensure an adequate supply of PPE for those directly treating those afflicted with COVID-19.

41. Under the environmental circumstances caused by COVID-19 and the Closure Orders, Plaintiff could not ensure a safe work environment to its employees without adequate supplies of PPE, as it is obligated to do under the Ohio Revised Code, especially given that continued operations would result in the potential for continuous community spread of COVID-19 thus causing ongoing direct physical property damage and physical loss to its premises.

42. As a result of the Closure Orders, Plaintiff has suffered substantial Business Income and incurred Extra Expense. The covered losses incurred by Plaintiff and owed under the Policy is increasing daily, but are expected to exceed \$2 millions dollars. As a result of such catastrophic loss, Plaintiff has been forced to cease operations, lay off employees, and close all locations indefinitely.

43. Plaintiff submitted a claim to Defendants requesting coverage for its business interruption losses promised under the Policy ("Claim").

44. On March 23, 2020, Defendants wrongfully denied the Claim.

COUNT I: DECLARATORY JUDGMENT

45. Plaintiff incorporates by reference, as if fully set forth herein, the facts and allegations set forth in paragraphs 1-44 above.

46. The Policy is an insurance contract under which Defendants were paid premiums for their promise to pay Plaintiff's losses for claims covered by the Policy, such as business losses incurred as a result of the Closure Orders forcing them to close its business.

47. Plaintiff has complied with all applicable provisions of the Policy, including payment of the premiums in exchange for coverage under the Policy.

48. Defendants have arbitrarily and without reasonable justification refused to reimburse Plaintiff for any losses incurred by Plaintiff in connection with the covered business losses related to the Closure Orders and the necessary interruption of its business stemming from the COVID-19 pandemic.

49. An actual case or controversy exists regarding Plaintiff's rights and Twin City's obligations under the Policy to reimburse Plaintiff for the full amount of losses incurred by Plaintiff in connection with the Closure Order and the necessary interruption of its business stemming from the COVID-19 pandemic.

50. In accordance with Rule 57 of the Ohio Rules of Civil Procedure, and R.C. 2721.01 to 2721.15, inclusive, Plaintiff seeks a declaratory judgment from this Court declaring the following:

- (a) Plaintiff's losses incurred in connection with the Closure Orders and the and the necessary interruption of its businesses stemming from the COVID-19 pandemic are insured losses under the Policies;
- (b) Defendants have waived any right they may have had to assert defenses to coverage or otherwise seek to bar or limit coverage for Plaintiff's losses by issuing coverage denials without conducting a claim investigation as required under Ohio law;
- (c) There is no exclusion in the Policy that applies to preclude Plaintiff's Claim;
- (d) Plaintiff has coverage for any future orders issued by the Governor and/or the Ohio Department of Health; and,
- (e) Defendants are obligated to pay Plaintiff for the full amount of the losses incurred and to be incurred in connection with the covered business losses related to the Closure Orders and the necessary interruption of its businesses stemming from the COVID-19 pandemic.

COUNT II: BREACH OF CONTRACT

51. Plaintiff incorporates by reference, as if fully set forth herein, the facts and allegations set forth in paragraphs 1-50 above.

52. The Policy is a contract under which Defendants were paid premiums in exchange for the promise to pay Plaintiff's losses for claims covered under the Policy, including the business losses incurred as a result of the Closure Orders and due to the direct physical damage to the premises forcing Plaintiff to close its business operations.

53. Plaintiff has complied with all applicable provisions and obligations of the Policy, including payment of premiums in exchange for coverage under the Policy, and yet Defendants have failed to comply with its obligations under the Policy's clear and unambiguous terms.

54. In the event any of the terms and conditions of the Policy are ambiguous, those terms and conditions must be interpreted in favor of Plaintiff and in favor of coverage, since Defendants drafted the Policy and presented it to Plaintiff as a form contract without any ability of Plaintiff to modify any portions of it.

55. By denying coverage for any business losses incurred by Plaintiff in connection with the Closure Orders and the COVID-19 pandemic, Defendants have breached their obligations and promises made under the Policy.

56. As a proximate result of Defendants' breach of the Policy, Plaintiff has sustained and continues to sustain damages for which Defendants are liable, in an amount to be established at trial.

COUNT III: BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING

57. Plaintiff incorporates by reference, as if fully set forth herein, the facts and allegations set forth in paragraphs 1-56 above.

58. Every insurance policy contains an implied covenant of good faith and fair dealing.

59. Defendants breached the implied covenant of good faith and fair dealing by wrongfully, and without reasonable justification, denying coverage to the Plaintiff under the Policy. The breach of the implied covenant of good faith and fair dealing is ongoing as Plaintiff reserves the right to amend this Complaint as new facts are discovered and/or developed.

60. Plaintiff is informed and believes, and therefore alleges, that Defendants have intentionally and maliciously, as part of a preconceived design, acted so as to deny Plaintiff the rightful benefits under the Policy.

61. Plaintiff is informed and believes, and therefore alleges, that Defendants failed to conduct any reasonable investigation of the Claim under the Policy, and instead issued a denial not based on reasonable justification, but rather in order to establish an industry-wide trend in response to the potential mammoth economic exposure that Defendants, and other similarly situated insurers face as a result of the global pandemic that claims for business losses under its policies will not be covered and to thwart other similarly situated business from seeking such benefits under their policies.

62. As a direct and proximate result of the breach of the implied covenant of good faith and fair dealing by Defendants, Plaintiff has suffered, and will continue to suffer damages. Plaintiff has been forced to cease its business operations, lay off employees, and close its facilities, in a climate where nearly 16 million people have filed for unemployment benefits, while Defendants reaped the benefit of huge premium dollars and promised policyholders, like Plaintiff, that business interruption claims would be paid.

WHEREFORE, Plaintiff respectfully prays that the Court:

1. Enter a declaratory judgment on Count I of the Complaint in favor of the Plaintiff and against Twin City, declaring as follows:
 - (a) Plaintiff's losses incurred in connection with the Closure Orders and the and the necessary interruption of its businesses stemming from the COVID-19 pandemic are insured losses under the Policies;
 - (b) Defendants have waived any right they may have had to assert defenses to coverage or otherwise seek to bar or limit coverage for Plaintiff's losses by issuing coverage denials without conducting a claim investigation as required under Ohio law;
 - (c) There is no exclusion in the Policy that applies to preclude Plaintiff's Claim;
 - (d) Plaintiff has coverage for any future orders issued by the Governor and/or the Ohio Department of Health; and,
 - (e) Defendants are obligated to pay Plaintiff for the full amount of the losses incurred and to be incurred in connection with the covered business losses related to the Closure Orders and the necessary interruption of its businesses stemming from the COVID-19 pandemic.
2. Enter a judgment on Count II of the Complaint in favor of Plaintiff and against Twin City and award damages for breach of contract in an amount to be proven at trial;
3. Enter a judgment on Count III of the Complaint in favor of Plaintiff and against Defendants for all compensatory damages in an amount in excess of Twenty-Five Thousand Dollars, plus attorneys' fees, costs, and punitive damages;
4. Enter a judgment in favor of Plaintiff and against Defendants in an amount equal to all attorneys' fees and related costs incurred for the prosecution of this coverage action, which amount to be established at the conclusion of this action;
5. Award to Plaintiff and against Defendants prejudgment interest, to be calculated according to law, to compensate Plaintiff for the loss of use of funds caused by Defendants' wrongful refusal to pay Plaintiff for the full amount in costs incurred in connection with the Claim.

6. Award Plaintiffs such other, further, and additional relief as this Court deems just and appropriate.

Respectfully submitted,

/s/ William J. Novak

WILLIAM J. NOVAK (0014029)

Novak, LLP

Hoyt Block Building

700 West St. Clair Ave., Suite 418

Cleveland, Ohio 44113

Phone: (216) 781-8700

Fax: (216) 781-9227

Email: william@novak-law.com

/s/ Colin P. Sammon

COLIN P. SAMMON (0076011)

Sammon Law, LLC

4931 Shady Brooke Run

Medina, Ohio 44256

Phone: (216) 978-3308

Fax: (216) 916-4905

Email: colin@sammonlaw.com

Attorneys for Plaintiff

JURY DEMAND

A trial by jury is hereby requested on all matters herein.

Respectfully submitted,

/s/ William J. Novak

WILLIAM J. NOVAK (0014029)

One of the Attorneys for Plaintiff

TO THE CLERK

Please serve the summons and a copy of this Complaint upon the Defendants via certified mail, return receipt requested, at the addresses set forth in the caption of the Complaint.

/s/ William J. Novak

WILLIAM J. NOVAK (0014029)

One of the Attorneys for Plaintiff